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SENATE BILL 109

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

CYNTHIA NAVA

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO GOVERNMENT PURCHASES; REDUCING THE TIME FOR PAYMENT  
OF BILLS; AMENDING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 13-1-158 NMSA 1978 (being Laws 1984,  
Chapter 65, Section 131, as amended) is amended to read:

"13-1-158. PAYMENTS FOR PURCHASES. --

A. No warrant, check or other negotiable instrument shall be issued in payment for any purchase of services, construction or items of tangible personal property unless the central purchasing office or the using agency certifies that the services, construction or items of tangible personal property have been received and meet specifications or unless prepayment is permitted under Section 13-1-98 NMSA 1978 by exclusion of the purchase from the Procurement Code.

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1           B. Unless otherwise agreed upon by the parties or  
2 unless otherwise specified in the invitation for bids, request  
3 for proposals or other solicitation, within fifteen days from  
4 the date the [state] central purchasing office or [state] using  
5 agency receives written notice from the contractor that payment  
6 is requested for services or construction completed or items of  
7 tangible personal property delivered on site and received by the  
8 state, the [state] central purchasing office or [state] using  
9 agency shall issue a written certification of complete or  
10 partial acceptance or rejection of the services, construction or  
11 items of tangible personal property.

12           C. Upon certification by the [state] central  
13 purchasing office or the [state] using agency that the services,  
14 construction or items of tangible personal property have been  
15 received and accepted, payment shall be tendered to the  
16 contractor within [sixty] thirty days of the date of  
17 certification. If payment is made by mail, the payment shall be  
18 deemed tendered on the date it is postmarked. After the  
19 [~~sixtieth~~] thirtieth day from the date that written  
20 certification of acceptance is issued, late payment charges  
21 shall be paid on the unpaid balance due on the contract to the  
22 contractor at the rate of one and one-half percent per month.

23           D. Late payment charges that differ from the  
24 provisions of Subsection C of this section may be assessed if  
25 specifically provided for by contract or pursuant to tariffs

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1 approved by the New Mexico public utility commission or the  
2 state corporation commission. "

3 Section 2. Section 13-1-170 NMSA 1978 (being Laws 1984,  
4 Chapter 65, Section 143) is amended to read:

5 "13-1-170. UNIFORM CONTRACT CLAUSES. --

6 A. A state agency, local public body or central  
7 purchasing office with the power to issue regulations may  
8 require by regulation that contracts include uniform clauses  
9 providing for termination of contracts, adjustments in prices,  
10 adjustments in time of performance or other contract provisions  
11 as appropriate, including but not limited to the following  
12 subjects:

13 [~~A.~~] (1) the unilateral right of a state agency  
14 or a local public body to order in writing:

15 [~~(1)~~] (a) changes in the work within the  
16 scope of the contract; and

17 [~~(2)~~] (b) temporary stoppage of the work or  
18 the delay of performance;

19 [~~B.~~] (2) variations occurring between estimated  
20 quantities of work in a contract and actual quantities;

21 [~~C.~~] (3) liquidated damages;

22 [~~D.~~] (4) permissible excuses for delay or  
23 nonperformance;

24 [~~E.~~] (5) termination of the contract for default;

25 [~~F.~~] (6) termination of the contract in whole or

Underscored material = new  
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1 in part for the convenience of the state agency or a local  
2 public body;

3 [G-] (7) assignment clauses providing for the  
4 assignment by the contractor to the state agency or a local  
5 public body of causes of action for violation of state or  
6 federal antitrust statutes;

7 [H-] (8) identification of subcontractors by  
8 bidders in bids; and

9 [I-] (9) uniform subcontract clauses in  
10 contracts.

11 B. A state agency, local public body or central  
12 purchasing office with the power to issue regulations shall  
13 require by regulation that contracts include a clause imposing  
14 late payment charges against the state agency, local public body  
15 or central purchasing office in the amount and under the  
16 conditions stated in Subsection C of Section 13-1-158 NMSA  
17 1978. "

18 Section 3. Section 74-6B-13 NMSA 1978 (being Laws 1992,  
19 Chapter 64, Section 10, as amended) is amended to read:

20 "74-6B-13. PAYMENT PROGRAM --

21 A. Unless provided otherwise in this section, all  
22 costs in excess of ten thousand dollars (\$10,000) that are  
23 necessary to perform a minimum site assessment in accordance  
24 with the regulations of the board shall be paid from the  
25 corrective action fund. In the event that an owner or operator

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1 has performed a minimum site assessment after March 7, 1990 but  
2 prior to March 9, 1992 and has expended more than ten thousand  
3 dollars (\$10,000), the owner or operator may apply to the  
4 department for reimbursement of the costs of the minimum site  
5 assessment in excess of ten thousand dollars (\$10,000) and shall  
6 be entitled to reimbursement of those costs to the extent that  
7 money is available.

8 B. An owner or operator who has performed or who has  
9 made arrangements to perform corrective action after March 7,  
10 1990 and in accordance with applicable environmental laws and  
11 regulations may apply to the department for payment of the costs  
12 of corrective action, other than a minimum site assessment, and  
13 shall be entitled to payment of those costs from the corrective  
14 action fund, if he has proven to the department that he has  
15 complied with the requirements of Section 74-6B-8 NMSA 1978 and  
16 if money is available in the fund.

17 C. Payment of the cost of corrective action, including  
18 the cost of a minimum site assessment, shall be made by the  
19 department following application and proper documentation of the  
20 costs and in accordance with regulations adopted by the  
21 secretary establishing eligible and ineligible costs. Eligible  
22 costs for payment are those reasonable and necessary costs  
23 actually incurred after March 7, 1990 in the performance of a  
24 site assessment and for corrective action that are consistent  
25 with the department's fee schedule. Ineligible costs include

Underscored material = new  
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1 [attorneys'] attorney fees, repair or upgrade of tanks, loss of  
2 revenue and costs of monitoring a contractor.

3 D. The department shall adopt regulations to provide  
4 for payments from the corrective action fund, to the extent that  
5 money is available in the fund, to persons who cannot afford to  
6 pay all or a portion of the initial ten thousand dollar  
7 (\$10,000) cost of a minimum site assessment otherwise required  
8 in this section. The department shall develop a financial  
9 assistance means test, including a sliding scale of financial  
10 relief as the department deems appropriate, that allows some or  
11 all of the minimum site assessment costs to be paid from the  
12 corrective action fund. This financial assistance relief shall  
13 be available to owners or operators who performed or made  
14 arrangements to perform corrective action after March 7, 1990.

15 E. All department determinations concerning the manner  
16 of payment, compliance and cost eligibility shall be made in  
17 accordance with department regulations.

18 F. If the owner or operator is in compliance with the  
19 requirements of Subsection B of Section 74-6B-8 NMSA 1978,  
20 payment of costs from the corrective action fund shall occur not  
21 later than [~~ninety~~] thirty days after the submission of the  
22 application and proper documentation of costs by the owner or  
23 operator, except as provided in Section 74-6B-14 NMSA 1978.

24 G. The department shall reserve not less than  
25 twenty-five percent of the unexpended, unencumbered balance of

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1 the corrective action fund on July 1 of each year for the  
2 payment of claims made on the fund. "

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FORTY-THIRD LEGISLATURE

FIRST SESSION, 1997

February 17, 1997

Mr. President:

Your PUBLIC AFFAIRS COMMITTEE, to whom has been referred

SENATE BILL 109

has had it under consideration and reports same with recommendation that it DO NOT PASS, but that

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 109

DO PASS, and thence referred to the FINANCE COMMITTEE.

Respectfully submitted,

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Shannon Robinson, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

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Date \_\_\_\_\_

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Adair, Boitano, Ingle, Vernon

Absent: None

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SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 109

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

AN ACT

RELATING TO GOVERNMENT PAYMENTS; REDUCING THE TIME FOR PAYMENTS  
FROM GOVERNMENT; AMENDING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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A. No warrant, check or other negotiable instrument shall be issued in payment for any purchase of services, construction or items of tangible personal property unless the central purchasing office or the using agency certifies that the services, construction or items of tangible personal property have been received and meet specifications or unless prepayment is permitted under Section 13-1-98 NMSA 1978 by exclusion of the purchase from the Procurement Code.

. 117296. 1

Underscored material = new  
[bracketed material] = delete

1 B. Unless otherwise agreed upon by the parties or  
2 unless otherwise specified in the invitation for bids, request  
3 for proposals or other solicitation, within fifteen days from  
4 the date the [state] central purchasing office or [state] using  
5 agency receives written notice from the contractor that payment  
6 is requested for services or construction completed or items of  
7 tangible personal property delivered on site and received [by  
8 ~~the state~~], the [state] central purchasing office or [state]  
9 using agency shall issue a written certification of complete or  
10 partial acceptance or rejection of the services, construction or  
11 items of tangible personal property.

12 C. Upon certification by the [state] central  
13 purchasing office or the [state] using agency that the services,  
14 construction or items of tangible personal property have been  
15 received and accepted, payment shall be tendered to the  
16 contractor within [~~sixty~~] thirty days of the date of  
17 certification. If payment is made by mail, the payment shall be  
18 deemed tendered on the date it is postmarked. After the  
19 [~~sixtieth~~] thirtieth day from the date that written  
20 certification of acceptance is issued, late payment charges  
21 shall be paid on the unpaid balance due on the contract to the  
22 contractor at the rate of one and one-half percent per month.

23 D. Late payment charges that differ from the  
24 provisions of Subsection C of this section may be assessed if  
25 specifically provided for by contract or pursuant to tariffs  
approved by the New Mexico public utility commission or the  
state corporation commission. "

Section 2. Section 13-1-170 NMSA 1978 (being Laws 1984,

1 Chapter 65, Section 143) is amended to read:

2 "13-1-170. UNIFORM CONTRACT CLAUSES. --

3 A. A state agency, local public body or central  
4 purchasing office with the power to issue regulations may require  
5 by regulation that contracts include uniform clauses providing for  
6 termination of contracts, adjustments in prices, adjustments in  
7 time of performance or other contract provisions as appropriate,  
8 including but not limited to the following subjects:

9 [~~A.~~] (1) the unilateral right of a state agency or a  
10 local public body to order in writing:

11 [~~(1)~~] (a) changes in the work within the scope  
12 of the contract; and

13 [~~(2)~~] (b) temporary stoppage of the work or the  
14 delay of performance;

15 [~~B.~~] (2) variations occurring between estimated  
16 quantities of work in a contract and actual quantities;

17 [~~C.~~] (3) liquidated damages;

18 [~~D.~~] (4) permissible excuses for delay or  
19 nonperformance;

20 [~~E.~~] (5) termination of the contract for default;

21 [~~F.~~] (6) termination of the contract in whole or in  
22 part for the convenience of the state agency or a local public  
23 body;

24 [~~G.~~] (7) assignment clauses providing for the  
25 assignment by the contractor to the state agency or a local public

1 body of causes of action for violation of state or federal  
 2 antitrust statutes;

3 [H-] (8) identification of subcontractors by bidders  
 4 in bids; and

5 [I-] (9) uniform subcontract clauses in contracts.

6 B. A state agency, local public body or central  
 7 purchasing office with the power to issue regulations shall require  
 8 by regulation that contracts include a clause imposing late payment  
 9 charges against the state agency, local public body or central  
 10 purchasing office in the amount and under the conditions stated in  
 11 Section 13-1-158 NMSA 1978. "

12 Section 3. Section 74-6B-13 NMSA 1978 (being Laws 1992,  
 13 Chapter 64, Section 10, as amended) is amended to read:

14 "74-6B-13. PAYMENT PROGRAM --

15 A. Unless provided otherwise in this section, all costs  
 16 in excess of ten thousand dollars (\$10,000) that are necessary to  
 17 perform a minimum site assessment in accordance with the  
 18 regulations of the board shall be paid from the corrective action  
 19 fund. In the event that an owner or operator has performed a  
 20 minimum site assessment after March 7, 1990 but prior to March 9,  
 21 1992 and has expended more than ten thousand dollars (\$10,000), the  
 22 owner or operator may apply to the department for reimbursement of  
 23 the costs of the minimum site assessment in excess of ten thousand  
 24 dollars (\$10,000) and shall be entitled to reimbursement of those  
 25 costs to the extent that money is available.

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Underscored material = new  
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1           B. An owner or operator who has performed or who has made  
2 arrangements to perform corrective action after March 7, 1990 and  
3 in accordance with applicable environmental laws and regulations  
4 may apply to the department for payment of the costs of corrective  
5 action, other than a minimum site assessment, and shall be entitled  
6 to payment of those costs from the corrective action fund, if he  
7 has proven to the department that he has complied with the  
8 requirements of Section 74-6B-8 NMSA 1978 and if money is available  
9 in the fund.

10           C. Payment of the cost of corrective action, including  
11 the cost of a minimum site assessment, shall be made by the  
12 department following application and proper documentation of the  
13 costs and in accordance with regulations adopted by the secretary  
14 establishing eligible and ineligible costs. Eligible costs for  
15 payment are those reasonable and necessary costs actually incurred  
16 after March 7, 1990 in the performance of a site assessment and for  
17 corrective action that are consistent with the department's fee  
18 schedule. Ineligible costs include ~~[attorneys']~~ attorney fees,  
19 repair or upgrade of tanks, loss of revenue and costs of monitoring  
20 a contractor.

21           D. The department shall adopt regulations to provide for  
22 payments from the corrective action fund, to the extent that money  
23 is available in the fund, to persons who cannot afford to pay all  
24 or a portion of the initial ten thousand dollar (\$10,000) cost of a  
25 minimum site assessment otherwise required in this section. The

1 department shall develop a financial assistance means test,  
 2 including a sliding scale of financial relief as the department  
 3 deems appropriate, that allows some or all of the minimum site  
 4 assessment costs to be paid from the corrective action fund. This  
 5 financial assistance relief shall be available to owners or  
 6 operators who performed or made arrangements to perform corrective  
 7 action after March 7, 1990.

8 E. All department determinations concerning the manner of  
 9 payment, compliance and cost eligibility shall be made in  
 10 accordance with department regulations.

11 F. If the owner or operator is in compliance with the  
 12 requirements of Subsection B of Section 74-6B-8 NMSA 1978, payment  
 13 of costs from the corrective action fund shall occur not later than  
 14 [~~ninety~~] thirty days after the submission of the application and  
 15 proper documentation of costs by the owner or operator, except as  
 16 provided in Section 74-6B-14 NMSA 1978.

17 G. The department shall reserve not less than twenty-five  
 18 percent of the unexpended, unencumbered balance of the corrective  
 19 action fund on July 1 of each year for the payment of claims made  
 20 on the fund. "

SPAC/SB 109

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 4, 1997

Mr. President:

Your FINANCE COMMITTEE, to whom has been referred

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 109

has had it under consideration and reports same with recommendation  
that it DO PASS, amended as follows:

1. On page 2, line 22, after the period insert "For  
purchases funded by state or federal grants to local public bodies,  
if the local public body has not received the funds from the federal  
or state funding agency, payments shall be tendered to the contractor  
within five working days of receipt of funds from that funding

**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

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agency. "

Respectfully submitted,

\_\_\_\_\_  
Ben D. Altamirano, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 6 For 0 Against  
Yes: 6  
No: None  
Excused: Carraro, Eisenstadt, Ingle, Lyons, McKibben  
Absent: None

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SPAC/SB 109

**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

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Page 18

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**. 117296. 1**

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FORTY-THIRD LEGISLATURE

FIRST SESSION

March 3, 1997

SENATE FLOOR AMENDMENT number \_\_\_\_\_ to SENATE PUBLIC AFFAIRS  
COMMITTEE SUBSTITUTE FOR  
SENATE BILL 109, as amended

Amendment sponsored by Senator Carroll H. Leavell

1. On page 2, line 12, strike "Upon" and insert in lieu thereof  
"Except as provided in Subsection D of this section, upon".

2. On page 2, between lines 22 and 23, insert the following new  
subsection:

"D. If the central purchasing office or the using agency

FORTY-THIRD LEGISLATURE  
FIRST SESSION

1       **SPAC/SB 109**  
2       SFI/SPAC/SB 109, aa

Page 20

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4       finds that the services, construction or items of tangible personal  
5       property are not acceptable, it shall, within thirty days of the date  
6       of receipt of written notice from the contractor that payment is  
7       requested for services or construction completed or items of tangible  
8       personal property delivered on site, provide to the contractor a  
9       letter of exception explaining the defect or objection to the  
10      services, construction or delivered tangible personal property along  
11      with details of how the contractor may proceed to provide remedial  
12      action. "

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23       **3.    Reletter succeeding subsections accordingly and adjust**  
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25       118078.1

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FORTY-THIRD LEGISLATURE  
FIRST SESSION

SFI/SPAC/SB 109, aa

Page 21

cross-references to correspond to these amendments.

\_\_\_\_\_

Carroll H. Leavell

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

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**State of New Mexico**  
**House of Representatives**

**FORTY-THIRD LEGISLATURE**

**FIRST SESSION, 1997**

**March 13, 1997**

**Mr. Speaker:**

**Your GOVERNMENT AND URBAN AFFAIRS COMMITTEE, to  
whom has been referred**

**SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 109, as amended**

**has had it under consideration and reports same with  
recommendation that it DO PASS.**

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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Respectfully submitted,

\_\_\_\_\_  
Lynda M. Lovejoy, Chairwoman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk)  
(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 6 For 0 Against

Yes: 6

Excused: Hobbs, Pederson

Absent: None

M \S0109

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